



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

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File: EAC-99-207-50871

Office: Vermont Service Center

Date:

NOV 28 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying extraneous information to
prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a religious teacher/catechist. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation. The director also found that the petitioner had failed to establish the beneficiary's two years of continuous religious work experience.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated June 25, 1999, the petitioner stated that the beneficiary:

is well qualified for the Religious duties which our church assigns and requires of her. She is devoted to the parishioners. Her language skills help her communicate and establish personal bonds. She is able to conduct religious classes, counseling sessions as well as retreats in the native language of the parishioners,

thereby providing spiritual comfort. Additionally, [she] is involved in the translations of religious works.

The petitioner submitted a photocopied certificate from the Papal Theological Institute in Warsaw, Poland which indicated that the beneficiary "completed 3-year course of studies at the faculty of theology for laity . . . on 6-15-85." The petitioner also submitted photocopied documents regarding the Catholic church.

On February 18, 2000, the director requested that the petitioner submit additional information. In response, counsel argued that the position of catechist is listed as a qualifying occupation in the regulations.

On appeal, counsel again argues that the position of catechist is listed as a qualifying occupation at 8 C.F.R. 204.5(m)(2). Counsel's contention that the position of catechist is specifically named as a qualifying occupation in the regulations is correct; however, the Service must look beyond the job title to the actual job duties to determine whether an occupation qualifies as a religious occupation. In this case, the petitioner has not demonstrated that the beneficiary will be engaged in a religious occupation. While the beneficiary may have completed a course of study at a theological institute there is no evidence that this either qualified or prepared her for her duties at the petitioner's church. Further, based on the actual description of the beneficiary's duties, as provided by the petitioner, it appears that any devout, Polish-speaking member of the congregation would be capable of working in the prospective occupation. As such, the petitioner has failed to establish that the prospective occupation is a religious occupation.

The next issue to be examined is whether the petitioner has established that the beneficiary had two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on June 25, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from June 25, 1997 to June 25, 1999.

In a letter dated June 25, 1999, the petitioner stated that the beneficiary had been performing the previously-described duties since May 1997 and that she received an annual salary of \$15,000.00. The petitioner submitted photocopies of three checks made out to the beneficiary in May and June 1999. These checks were purportedly for "religious education" in January, February, March, April and May of 1999. There is no evidence that these checks were cashed.

On February 18, 2000, the director requested that the petitioner submit evidence of the beneficiary's work experience during the two-year period prior to filing. In response, the petitioner submitted a photocopy of a 1999 Form W-2 made out to the beneficiary.

On appeal, counsel reasserts that the beneficiary has been employed by the petitioner since 1997. Counsel submits a photocopy of a 1998 Form W-2 made out to the beneficiary. In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation. The petitioner has not submitted sufficient evidence to document the beneficiary's purported employment throughout the two-year period. The Forms W-2 could have been prepared at any time and there is no evidence that they were actually filed with the Internal Revenue Service. There is no independent, corroborative evidence (such as cancelled pay checks, or tax returns filed with the IRS) to document the beneficiary's receipt of a salary. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, the petitioner has not established that the beneficiary was continuously engaged in a religious occupation from June 25, 1997 to June 25, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.